

UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Johann Magg et al.  
Application Number: 10/587,296  
Filing Date: 04/13/2007  
Group Art Unit: 3742  
Confirmation No.: 5391  
Examiner: Reginald Alexander  
Title: COFFEE MACHINE WITH A CONTINUOUS FLOW  
HEATER

Mail Stop Appeal Brief - Patents

Commissioner for Patents

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**REPLY BRIEF**

Pursuant to 37 CFR 41.41, Appellant hereby files a reply brief in the above-identified application. This Reply Brief is in reply to the Examiner's Answer dated September 16, 2010, and supplements the arguments made in Appellant's Appeal Brief filed July 20, 2010.

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(1) STATUS OF CLAIMS

The status of the claims is the same as listed in the Appeal Brief.

(2) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection to be reviewed on appeal are the same as listed in the Appeal Brief.

(3) ARGUMENT

The arguments presented in the Appeal Brief are supplemented by the following arguments. For clarity, the numbering of the subparagraphs herein is the same as in the Appeal Brief.

- A) Claims 14-16, 18-27 and 29-31 are patentable under 35 U.S.C. §102(e) over U.S. Patent Application Publication No. 2003/0066431 (the Fanzutti reference)

The Office Action rejects claims 14-16, 18-27 and 29-31 under 35 U.S.C. §102(e) over the Fanzutti reference. Appellants traverse this rejection.

- i) Claims 14, 15, 18, 21, 25

The Examiner's Answer asserts that components "associated with" Fanzutti's top end cap 138 and components "associated with" Fanzutti's bottom end cap 136 can be combined to satisfy claim 14's feature of the flexible tube connection piece including receiving elements for integrating additional components of the coffee machine. Appellants disagree with this assertion.

Claim 14 includes the feature of a flexible tube connecting piece at one end of a continuous flow heater, the flexible tube connecting piece including receiving elements for integrating additional components of the coffee machine. In contrast, neither top end cap 138 of Fanzutti nor bottom end cap 136 of Fanzutti has elements for integrating additional components. At most, top end cap 138 has a single receiving element for integrating a single component, and it is not clear that bottom end cap 136 even has a single receiving element for integrating anything. The Examiner's Answer now asserts that pressure relief valve 146 of Fanzutti corresponds to an additional component "associated with" top end cap 138. Appellants note that claim 14 does not include the term "associated with". Claim 14 includes the feature of the flexible tube connecting piece including receiving elements for integrating

additional components. Also, even if pressure relief valve 146 is considered to be integrated by a receiving element of top end cap 138 (and Appellants strongly submit that it cannot be), pressure relief valve 146 would be the only component integrated by a receiving element of top end cap 138. Claim 14 requires receiving elements and additional components, not just one receiving element or just one additional component.

The Examiner's Answer asserts that pump 54 of Fanzutti corresponds to an additional component "associated with" both top end cap 138 and bottom end cap 136. Appellants see no support in the Examiner's Answer for this statement. Further, as stated above, the term "associated with" does not exist in claim 14. Further still, Appellants submit that neither top end cap 138 nor bottom end cap 136 has a receiving element that in any way integrates pump 54.

Appellants respectfully requests reversal of this rejection.

ii) Claims 19 and 30

The Appeal Brief points out that claim 19 includes the feature of the flexible tube connecting piece including a securing means for securing the continuous flow heater in the housing. The Appeal Brief argues that the Office Action defined securing means (shield members 120, 122) of Fanzutti are not included in the Office Action defined flexible tube connecting pieces (end caps 136, 138). The Examiner's Answer does not respond to this argument.

Appellants respectfully requests reversal of this rejection.

iii) Claims 20 and 31

The Appeal Brief points out that claim 20 includes the feature of the securing means including additional receiving elements for integrating additional components of the coffee machine. The Appeal Brief argues that the Office Action defined securing means (shield members 120, 122) of Fanzutti do not have any additional receiving elements for integrating

additional components. The Office Action defined additional receiving elements (clips 126, 130) are not included in shield members 120, 122.

The Examiner's Answer appears to be arguing that the language of claim 20 does not require that the receiving elements even be attached to the securing means. Appellants submit that "the securing means includes additional receiving elements" can only mean that the additional receiving elements are a part of (and therefore attached to) the securing means.

Appellants respectfully requests reversal of this rejection.

iv) Claims 22-24 and 16

Claim 22 includes the feature of a heating rod thermally connected to the pipe of the continuous flow heater by means of at least one flat contact surface. The Examiner's Answer argues that shield members 120, 122 of Fanzutti correspond to the claimed flat surface. Appellants disagree for many reasons. First, there is no indication that shield members 120, 122 thermally connect heating elements 142 to tube 140. Second, there is no indication that shield members 120, 122 connect heating elements 142 to tube 140 in any way. In fact, the specification of Fanzutti clearly states that "blocks 144 function as mechanical attachments for the heating elements 142 to the water conduit tube 140. In addition, the blocks 144 also function as heat transfer elements to transfer heat from the heating elements 142 to the water conduit tube 140." (paragraph 0052). Third, it appears from the figures that shield members 120, 122 do not even contact heating elements 142 or tube 140.

Appellants respectfully requests reversal of this rejection.

v) Claim 26

Appellants submit that there is nothing in Fanzutti that supports the argument of the Examiner's Answer regarding claim 26. There is nothing that supports a tapered end of either end cap of Fanzutti abutting against in inner wall of tube 140.

Applicants respectfully request reversal of this rejection.

vii) Claim 29

Appellants submit that there is nothing in Fanzutti that supports the argument of the Examiner's Answer regarding claim 29. Bottom tube fitting 132 is a tube fitting, not an end cap. Bottom end cap 136 is an end cap. Top tube fitting 134 is a tube fitting, not an end cap. Top end cap 138 is an end cap.

Applicants respectfully request reversal of this rejection.

(4) CONCLUSION

In view of the foregoing discussion, Appellants respectfully request reversal of the Examiner's rejections.

Respectfully submitted,

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November 3, 2010

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